1877

11-164 Field

Jan. 22. 1880

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 886.

THE UNITED STATES, APPELLANT,

vs.

HANCE LAWSON.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 4, 1879.

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1 In the Court of Claims of the United States.

HANCE LAWSON
vs.
THE UNITED STATES. } No. 11561.

I.—*Petition.—Filed March 15th, 1877.—J. R.*

To the honorable the judges of the Court of Claims of the United States:

The petition of Hance Lawson respectfully shows that he is a citizen of the United States, and a resident of Somerset County, in the State of Maryland, and has been for a long time previously to, and since the 25th day of February, A. D. 1867; that on the last named day an act was passed by Congress, creating the district of Eastern Maryland as a collection district, and establishing Crisfield, in the county and State aforesaid, and in the said district, as a port of entry and the office of the collector (Rev. Stats. U. S., § 2548, 2549), and providing that the collector for said district should receive a salary of $1,200 a year (Ib., § 2679); that on the 19th day of April, A. D. 1867, your petitioner was
2 duly appointed collector of said port, and duly qualified as such, giving bond, dated April 27th, 1867, and filled the said office until March 8th, 1871; at which last-mentioned time, having been appointed his own successor, he duly qualified as such, giving bond, dated March 8th, 1871, and filled the said office until the 1st day of April, 1875; that during the occupancy of said office by your petitioner as collector, he collected certain fees authorized by sections 2655, 4185, 4193, 4194 of the Revised Statutes of the United States, which he accounted for in his reports to the honorable the First Auditor of the Treasury, and which were subject to certain payments on account of fuel, clerk's hire, and other incidental expenses, after which payment certain balances remained in the hands of your petitioner undisposed of.

Your petitioner further shows that in the beginning of his said office as collector, there being no naval officer or surveyor in the said district, your petitioner, believing himself solely entitled to any balance of said fees remaining in his hands after the payment of such incidental expenses as might be required by the honorable the Secretary of the Treasury, requested the honorable the Commissioner of Customs, and claimed, to be allowed said fees as part of his compensation for discharging the duties of his office, and for his services in the matters about which the said fees were collected, or so much thereof as with the said salary of $1,200, and other sources of compensation, should not exceed in the aggregate the sum of $3,000 in any one year (see Rev. Stats. U. S., §§ 2691, 2692, 2693). The said the honorable Commissioner of Customs, by letter dated the 18th day of July, 1867, refused to allow your petitioner the said fees, or any part thereof, and required him to account for and pay over the same on the ground that your petitioner was entitled to no other compensation than the said sum of $1,200 per annum, upon the proper construction of the said act of Congress of February 25th, 1867, creating the said collection district (Rev. Stats., § 2548, 2549, 2679). Your petitioner, in accordance with the said requirements, though protesting and believing the construction of the said act as aforesaid, to be erroneous, did so account for the said fees, and pay the balances so in his hands remaining after the disbursements aforesaid into the Treasury of the United States, the same being the whole of
3 the said fees so received by him during his entire terms of office,

from April 27th, 1867, to April 1st, 1875, after deducting said payments, &c.

Your petitioner further shows that under the provisions of section 2659 of the Revised Statutes, he was entitled to commissions at the rate of three per cent. upon his collections on account of tonnage in the said district, but under the said instructions and requirements of the said Commissioner of Customs, under the said erroneous construction of the said act of Congress, your petitioner was required to and did pay over to the Treasury, for the whole of said terms of office, the said three per cent. due your petitioner as aforesaid.

And your petitioner shows that the amounts so erroneously required to be, and paid by him into the Treasury on account of fees in excess of the said fixed salary of $1,200, after deducting such incidental expenses as were duly authorized to be paid out of such fees by the Secretary of the Treasury, were as follows:

For the year, from June 30th, 1867, to June 30th, 1868, the sum of $343.69.

For the year, from June 30th, 1868, to June 30th, 1869, the sum of $98.79.

For the year, from June 30th, 1869, to June 30th, 1870, the sum of $372.42.

For the year, from June 30th, 1870, to March 7th, 1871, the sum of $994,72 (deposited April 25th, A. D. 1871).

For the year, from March 8th, 1871, to June 30th, 1871, the sum of $237.75.

From June 30th, 1871, to June 30th, 1872, $1,052.13.

For the year, from June 30th, 1872, to June 30th, 1873, the sum of $992.99.

For the year, from June 30th, 1873, to June 30th, 1874, the sum of $1,066.96.

And for the year, from June 30th, 1874, to April 1st, 1875, the sum of $793.31.

All which said several sums, amounting in the aggregate to $5,552.96, your petitioner claims to be due him.

And your petitioner shows that the amounts erroneously required to be paid, and paid by him into the Treasury, to which your petitioner was properly entitled, being the amount of his commisions at three per cent. upon his collections on account of tonnage, were as follows:

4 For the year, from April, 1867, to June 30th, 1867, the sum of $630.10 collected; commissions, $18.93.

For the year, from June 30th, 1867, to June 30th, 1868, the sum of $3,874.56 collected; commissions, $116.24.

For the year, from June 30th, 1868, to June 30th, 1869, the sum of $3,522.36 collected; commissions, $105.67.

For the year, from June 30th, 1869, to June 30th, 1870, the sum of $3,532.20 collected; commission, $105.97.

For the year, from June 30th 1870, to June 30th, 1871, the sum of $256.20 collected; commissions, $7.69.

For the year, from June 30th, 1871, to June 30th, 1872, the sum of $0.

For the year, from June 30th, 1872, to June 30th, 1873, the sum of $8.81 collected; commissions, 26 cents.

All which said several sums, amounting in the aggregate to $354.76, your petitioner claims to be due him.

And your petitioner further shows that all of said sources of compen-

sation to him as collector will not exceed in the aggregate the sum of $3,000 in any one year.

And your petitioner further shows that since the determination of his second term of office, his successor in office, Thomas S. Hodson, appealed, on the 30th day of June, 1876, from the said decision of the Commissioner of Customs, the honorable N. Sargent, dated July 18th, 1867, and the said appeal was, by consent of the said Thomas S. Hodson and the honorable H. C. Johnson, the present Commissioner of Customs, referred to the honorable George F. Talbott, Solicitor of the Treasury, who, on the 30th day of January, 1877, gave his opinion that the collector of the said district was entitled to all the fees of the said office, so as above set forth, in addition to the said salary of $1,200 per annum; and the said opinion was affirmed by the honorable the Secretary of the Treasury, and adopted by the honorable H. C. Johnson, the present Commissioner of Customs; the duly authenticated copy of which said opinion, and the affirmance and adoption thereof, is herewith filed, marked Exhibit.

Your petitioner further shows that he is sole owner of his said claim; that no assignment or transfer of said claim, or any part thereof, or any interest therein has been made; that he is entitled justly to the said amounts, being in the aggregate the sum of $6,307.72, from the United States, after allowing all just credits and offsets; that he is a citizen, and has at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted or given encouragement to rebellion against the said government; and that he believes the facts as stated in this petition are true.

The residence of petitioner is Crisfield, Somerset County, Maryland.

The residence of J. Upshur Dennis, his attorney, is 51 W. Fayette street, Baltimore City, Maryland.

Wherefore your petitioner demands judgment for the said sum of $6,307.72, and prays for such other and further relief and redress as to right and equity may pertain and the court is competent to give in the premises. And, as in duty bound, &c.

HANCE LAWSON.

J. UPSHUR DENNIS, *Solicitor.*

STATE OF MARYLAND,
Somerset County, to wit:

On the 5th day of March, A. D. 1877, before me, the subscriber, a justice of the peace in and for the State and county aforesaid, personally appeared Hance Lawson, the above-named petitioner, and made oath on the holy evangely of Almighty God, that he believes the facts stated in the foregoing petition to be true as therein stated.

Witness my hand this day and year first aforesaid.

THOS. K. WHELTON, *J. P.*

STATE OF MARYLAND,
Somerset County, to wit:

I, Levin L. Waters, clerk of the circuit court for Somerset County aforesaid, hereby certify that Thomas K. Whelton, esquire, before whom the above affidavit appears to have been made, and whose name appears thereto signed, was, at the time the same bears date, one of the justices of the peace of the State of Maryland, in and for Somerset County aforesaid, duly commissioned and sworn.

6 In testimony whereof I hereunto subscribe my name and affix the seal of the said circuit court this sixth day of March, A. D. 1877.

[SEAL OF THE COURT.] LEVIN L. WATERS,
Clerk.

EXHIBIT.

DEPARTMENT OF JUSTICE,
OFFICE OF SOLICITOR OF THE TREASURY.
Washington, D. C., January 30th, 1877.

SIR: I have the honor to return herewith the papers relating to the appeal of Thomas S. Hodson, collector of customs at Crisfield, Maryland, from the decision of the Commissioner of Customs, fixing the salary attached to his office by the statutes as his sole compensation, which papers were referred to me on the 27th instant, for an expression of opinion as to whether that collector is entitled to retain any official fees in addition to the salary provided by law.

Section 2679 of the Revised Statutes provides that "the collector for the eastern district of Maryland shall receive a salary of twelve hundred dollars a year." This is the entire language of the statutes specifically relating to the compensation attached to this office. There are no words limiting this compensation to the salary, as in the case of some of the collectors whose pay is provided for, and there are likewise no words indicating that the salary should be in addition to fees, as also in the case of some of the collectors named.

It has been an established practice, under the statutes, from an early period, to allow custom officers, such as collectors, naval officers, and surveyors, to retain the fees, or a certain proportion of them, within a certain prescribed maximum, embracing the salary specifically provided by statutes. These fees have generally been, in the main, the
7 greater proportion of the compensation attached to the office, the salary in most cases being barely nominal.

Certain of the sections of the Revised Statutes provide as to such fees, that "there shall be allowed and paid for the use of collectors the following fees," (sec. 2654,) or that certain fees shall be equally divided between the collector and other officers (sec. 2655), or that "the fees to be allowed and paid to collectors for services," &c., (sec. 4185), or "that the collector shall receive" for certain services (secs. 4193, 4194).

Section 2691 provides that whenever the emoluments of any other collector (the exceptions being those of Boston, Portland, New York, Philadelphia, Baltimore, Charleston, Savannah, and New Orleans) shall exceed three thousand dollars in any one year, after deducting therefrom the necessary expenses incident to his office in the same year, the excess shall in every such case be paid into the Treasury for the use of the United States, and the following section puts it within the discretion of the Secretary of the Treasury to provide for the payment from the Treasury of such incidental expenses, where it shall seem to him that the compensation of the collector from such fees is inadequate.

If it shall appear that any of the fees retained by Mr. Hodson were derived from services rendered under the provisions of section 4381, they are not necessarily wrongfully retained, because that section does not employ the usual language of the other sections of the statutes regarding the collection fees to which I have referred.

The language here is simply "The following fees shall be levied and collected," giving no indication that they are for the use of the collector

or whether they are to be paid into the Treasury. The Attorney-General has decided, however, in his opinion of September 11, 1875, that these fees are nevertheless subject to distribution to custom officers, as was provided in the Statutes at Large, from which this section was taken by the revisers, there being in the new statutes no intent declared or implied to provide a different mode of distribution.

From an examination of all the statutes bearing upon this subject, I can see no valid reason for limiting the compensation of the collector at Crisfield to the salary or for depriving him of the fees of the office,
8 or so much of them as with the salary aforesaid will make the maximum of three thousand dollars, as provided in section 2691, in respect of all other collectors, excepting those specified.

Very respectfully,
(Signed) GEORGE F. TALBOT,
Solicitor of the Treasury.

Hon. L. M. MORRILL,
Secretary of the Treasury.

(Endorsed as follows:)

TREASURY DEPARTMENT,
January 30th, 1877.

Solicitor: Returning papers in relation to the reduction of official fees by collector of customs, Crisfield Md., with opinion.

TREASURY DEPARTMENT,
February 1st, 1877.

Approved and respectfully referred to the Commissioner of Customs.
(Signed) CHAS. F. CONANT,
Acting Secretary.

9] II.—*Traverse.*—*Filed March* 28, 1877.

And now comes the Attorney-General, on behalf of the United States, and makes answer to the petition of the claimant herein; and not confessing the same or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the United States are indebted to the said claimant in the sum of six thousand three hundred and seven dollars and seventy-two cents, says that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said government, denies the said allegation.

THOMAS SIMONS,
Assistant Attorney-General.

10 III.—*Plea of limitation.*—*Filed March* 28, 1877.

Now come the defendants, by their Attorney-General, and say that the claimant herein should not further have or maintain his suit against the defendants, for the reason that the petition of the claimant was not

filed in this court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

THOMAS SIMONS,
Assistant Attorney-General.

11 IV.—*Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The claimant held the office of collector of the port of Crisfield, Md., from April 19, 1867, till April 1, 1875, and received from the defendants during that time a salary at the rate of $1,200 per annum.

II.

On the 18th of July, 1867, in answer to a letter written by the claimant to him, the Commissioner of Customs wrote to the claimant the following letter:

"TREASURY DEPARTMENT,
"OFFICE OF COMMISSIONER OF CUSTOMS,
"*July* 18, 1867.

"SIR: Your letter of 15th ulto. is received. The twelve hundred dollars salary given you by the act creating your district constitutes your entire compensation. You are required to account for all fees.

"Very respectfully,

"N. SARGENT,
"*Commissioner.*

"HANCE LAWSON, Esq.,
"*Collector, Crisfield, Md.*"

III.

In consequence of this letter the claimant accounted for and paid into the Treasury, as hereinafter set forth, all moneys collected by him as duties on imports and tonnage, except what was expended for office-rent, fuel, and expenses, and for services of his deputy and clerks, and should be allowed in the settlement of his accounts at the Treasury Department.

12 IV.

During his term of office the plaintiff collected as fees $9,066.43, of which he paid out for office-rent, fuel, and expenses the sum of $623.48, and for his deputy and clerks the sum of $2,492.29, as follows:

Date.	Fees received.	Paid out for office, rent, fuel, and expenses.	Deputy and clerks.
To June 30, 1867	$169 25		
To June 30, 1868	1,135 55	$38 15	$992 96
To June 30, 1869	985 78	66 99	800 00
To June 30, 1870	1,216 50	77 05	769 33
To Mar. 7, 1871	1,092 15	67 23	
To June 30, 1871	253 75	16 00	
To June 30, 1872	1,167 90	115 77	
To June 30, 1873	1,096 10	103 11	
To June 30, 1874	1,180 80	113 84	
To Mar. 31, 1875	818 65	25 34	
Total	9,066 43	623 48	2,492 29

for which sums he was allowed credit in his accounts.

V.

The remainder of the $9,066.43, to wit, the sum of $5,950.66, was by him paid over without protest to the Treasury of the United States, as follows:

May 22, 1869	$343 69
March 28, 1871	471 21
June 6, 1871	994 92
September 30, 1871	237 75
February 25, 1873	1,052 13
December 30, 1873	992 99
March 19, 1874	862 59
September 30, 1874	204 37
December 31, 1874	300 00
March 23, 1875	401 26
May 22, 1875	92 05
	5,950 66

Of this sum, $2.30 was for tax on his salary.

VI.

Under the fifteenth section, act of 14th July, 1862, and fourth section, act 3d March, 1865, he collected and paid to the government tonnage tax as follows:

Before the 8th March, 1871	$11,815 42
March 8, 1871, to June 30, 1872	15 00
July 1, 1872, to December 31, 1872	8 81
	11,839 23

Upon the foregoing facts the conclusion of law is that the claimant is entitled to recover $5,605.38, on the grounds set forth in the following opinion:

V.—*Opinion of the court.*

DRAKE, Ch. J., delivered the opinion of the court:

The eastern district, of which Crisfield was the port of entry, was, by the act of February 25, 1867 (14 Stat. L., 410, ch. lxxxi), formed
13 out of a part of the district of Vienna, which had been constituted by the act of July 31, 1789 (1 Stat. L., 33, ch. v), and had continued in existence until the passage of the act of 1867, when it was abolished.

By the act of February 25, 1867, it was enacted "that the collector of said eastern district shall receive an annual salary of twelve hundred dollars."

The question is, whether the claimant, as collector at Crisfield, was entitled by law to any further compensation than that prescribed salary. To decide this, it is necessary to examine the laws in regard to the compensation of collectors which were in force when the claimant was appointed.

By the act of March 2, 1799 (1 Stat. L., 704, ch. xxiii), compensation was allowed to all collectors, as follows:

I. Certain prescribed fees, authorized to be demanded and received "for the use of the collectors," which provision is now in § 2654 of the Revised Statutes.

II. Certain percentages on duties on imports and tonnage, varying in amounts at different ports named, and winding up with a general provision allowing "to the collectors of all other districts three per cent." The district of Vienna not being there named, came under the three per cent. clause. This provision modified in the amounts of commissions allowable in certain named districts, but containing the three per cent. clause as to all others, is in § 2659 of the Revised Statutes.

"In addition to those allowances," the act authorized to "be allowed and paid annually" to the collectors of certain named districts a sum of $150, $200, or $250; and among those named to receive $200 was the collector of the Vienna district.

It follows that, up to the time when that district was abolished, the collector at Vienna had lawful right to compensation in a threefold form, viz: 1. Fees; 2. Three per cent. on duties or imports and tonnage; and, 3. An annual salary of $200. The fees under a law applicable to all collectors; the percentage under a law applicable to all collectors except those in certain named districts; and the salary under a provision applicable only to the districts named.

The fees and percentages were not, however, to be entirely for the emolument of collectors, but were to be applied in part to pay the expenses of the office; and the collectors were required to render annual accounts thereof, and also of all their expenditures for rent, fuel, stationery, and clerk hire, to the Treasury Department. (Act of March 2, 1799, ut supra, and act of May 7, 1822, 3 Stat. L., 693, ch. cvii, now in § § 2639 and 2641 of the Revised Statutes.)

Whatever balance of fees and percentages might remain after payment of those expenditures, was to form a part of the collector's emoluments, provided the emoluments did not exceed $3,000 per annum after deducting the necessary expenses incident to his office; in which case the ex-

cess over that sum was required to "be paid into the Treasury for the use of the United States." (Act of May 7, 1822, ut supra.)

Such was the state of the law when the claimant was appointed to, and during the whole time he held the office of collector of the eastern district at Crisfield.

With the law in this condition, the Commissioner of Customs decided that the twelve hundred dollars salary given the claimant by the act creating his district constituted his entire compensation, and required him to account to the Utited States for all fees. Was this decision correct? We think not.

Had the law placed collectors in two distinct classes as to com-
14 pensation, and allowed to one class fees and percentage only, and to the other class salary only, it might with more justice be claimed that the fixation of the claimant's salary at $1,200 would place him in the latter class and debar him from the fees and percentage. In many instances, as may be seen by reference to the Revised Statutes, from § 2660 to § 2685, Congress manifested its intention to make the salaries of collectors their entire compensation, by using apt words to that end; but no such words are used in reference to the collector of the district in question. As to him, the provision simply declares what his salary shall be. To give this the effect of excluding him from the benefit of the fees and percentage, it must be held that it was an implied repeal, as to his district, of the laws allowing fees and percentage. We do not see that any such effect is attributable to it, for there is no inconsistency between the allowance of salary and the allowance of fees and percentage. On the contrary, the acts referred to allow salary, fees, and percentage to a very large number of collectors. If, then, there was no repeal of the acts allowing fees and percentage, those acts remain in full force, and the claimant, during the whole term of his tenure of the office, was entitled, first, to the salary; and, secondly, to the balance of the fees and percentage, after deducting the expenses of his office.

That, under the authoritative requirement of the Treasury Department, he paid all that balance into the Treasury, without protest, gives no right to the government to hold the money. It was not, in the eye of the law, a voluntary payment. It was demanded of him by his official superior, as now appears, without warrant of law, and it would be a reproach to the government to hold it unlawfully, merely because he submitted, without protest, to an order which he was not legally bound to resist, and resistance to which might not only have cost him his office, but involved him in expensive and injurious conflict with the government. The jurisdiction of this court over "claims founded upon any law of Congress" was conferred for the very purpose of obtaining judicial decision of controversies between the government and citizens, growing out of variant constructions of such laws; and the relief intended to be afforded the citizen here is not to be denied him because he unresistingly obeyed a requirement which he might well have supposed would not have been made without authority of law.

The statute of limitation bars a portion of the claim. The statute declares "that every claim against the United States cognizable by the Court of Claims shall be forever barred unless the petition setting forth a statement of the claim be filed in the court * * * within six years after the claim first accrues."

While the claimant had in his own hands the fees and percentage, he had no claim against the United States cognizable in this court.

It was only when he paid them into the Treasury that his claim so accrued as to authorize him to sue on it here.

His petition was filed on the 15th of March, 1877, and he can have no judgment for any sum paid by him into the Treasury more than six years before that date. He cannot, therefore, recover the amount of $343.69 paid by him on the 22d of May, 1869, nor the three per cent. on $11,815.42 of tonnage tax paid into the Treasury before March 8, 1871.

He is entitled to recover the fees paid into the Treasury after May 22, 1869, as stated in the finding of facts, less $2.30 of tax on his salary, being $5,604.67; and also 71 cents on $23.81 of tonnage tax paid after March 8, 1871; making together $5,605.38; for which sum judgment will be rendered in his favor.

15 VI.—*Final judgment.*

At a Court of Claims held at the Capitol in the City of Washington on the 28th day of April, A. D. 1879, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Hance Lawson, claimant, do have and recover of and from the United States the sum of five thousand six hundred and five dollars thirty eight cents ($5,605.38).

16 VII.—*Application for appeal and order allowing same.*

From the judgment rendered in the above entitled cause on the 28th April, 1879, in favor of claimant, the defendants, by their Attorney-General, on the 28th day of June, 1879, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed June 28, 1879.

AT CHAMBERS.

Allowed.

C. D. DRAKE,
Chief Justice.

17 In the Court of Claims.

HANCE LAWSON
vs.
THE UNITED STATES. } No. 11561.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application by the defendants for the allowance of an appeal to the Supreme Court of the United States, and of the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this nineteenth day of September, A. D. 1879.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 886. The United States, appellants, vs. Hance Lawson. Court of Claims. Filed 4th October, 1879.

In the Supreme Court of the United States.

OCTOBER TERM, 1879.

THE UNITED STATES, APPELANTS,
vs.
HANCE LAWSON. } No. 886.

The above case seems to present only the question in *Ellsworth's* case, No. 884; but the proposal for its submission upon printed briefs was not made until that had been prepared for submission.

The *facts* are stated upon pages 6 and 7 of the Record.

Upon the part of the United States the case is submitted upon the argument already made in *Ellsworth's* case.

S. F. PHILIPS,
Solicitor-General.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1879.

THE UNITED STATES, *Appellant*,
vs.
HANCE LAWSON.

No. 886.

BRIEF FOR THE APPELLEE.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1879.

THE UNITED STATES, *Appellant*,
vs.
HANCE LAWSON.
No. 886.

BRIEF FOR THE APPELLEE.

Hance Lawson was Collector of the Port of Crisfield, in the State of Maryland, from April 19th, 1867, to April 1st, 1875. The Act of Congress creating the office, attached to it a salary of $1200. Lawson believed himself entitled, in addition thereto, to certain fees which are paid for the use of collectors, collected by him under the provisions of sections 2654, 2655 and 4185 of the Revised Statutes; and shortly after entering upon the duties of his office, he wrote to the Commissioner of Customs, claiming to be allowed them. In reply thereto, he received on July 18th, 1867, an answer from the Commissioner of Customs denying his claim, and "requiring him to account for all fees." (II Finding, record page 6.) "*In consequence of this letter*," he accounted for and paid them into the Treasury. (III Finding, page 6.) The amount to which he was entitled, after certain deductions provided for by law, together with the salary, reached in no year the maximum of $3000, to which he was restricted under the general

law. (Sections 2691, 2692, 2693 Revised Statutes.) The total amount claimed by him, after deducting the first payment into the Treasury, which it is admitted is barred by the Statute of Limitations, is $5,605.38. Shortly after the expiration of his term of office, he brought suit for this amount in the Court of Claims, and judgment was rendered in his favor for that sum, from which judgment the defendant appealed.

Two questions of law arise upon this appeal:

First. What compensation was this collector entitled to?

Upon this point we can add nothing by way of argument to the opinion of the Court of Claims, and of Solicitor Talbot. (Page 4, record.)

Secondly. Does the doctrine that money voluntarily paid cannot be recovered back, apply to bar a recovery, under the circumstances above presented?

On behalf of the appellee, it is contended:

I. The doctrine of voluntary payment has no application to a case like the present.

Lawson was a subordinate officer of the Treasury Department, and as such, was bound to obey the authoritative demands of the head of that Department. Public policy alone requires this, for without it the efficiency and proper discipline of the service could not be maintained. The necessities of the public service cannot admit that the subordinate officers of a Department shall set up their individual views against the positive commands of its head. Particularly is this true of the Treasury Department, with its intricate and delicate system; its collecting officers have often large sums in their hands belonging to the Government, and a resistance on their part to its command, upon the theory of some private right of their own, with the delay and inconvenience necessarily resulting from such a course, might seriously hamper the Government. When the decision is deliberately made against him by the Department, which has its proper legal functionaries to assist it in determining the question, the duty of the subordinate to obey is plain; he must pay over in obedience to the demand, and litigate his rights afterwards.

The whole tenor of the remedy given by Congress to the Treasury Department, (we speak not now of the right to remove the recalcitrant official,) implies, and is based, upon that theory. Section 3625 of the Revised Statutes provides, "Whenever any collector of the revenue . . . . . or other officer who has received the public money before it is paid into the Treasury of the United States, fails to render his account, or to pay over the same in the manner or within the time required by law, it shall be the duty of the First Comptroller of the Treasury (or the Commissioner of Customs, as the case may be,) to cause to be stated the account of such officer, exhibiting truly the amount due the United States, and to certify the same to the Solicitor of the Treasury, who *shall issue a warrant of distress* against the *delinquent* officer, &c.," and section 3627 requires the Marshal to levy and collect the sum due, by distress and sale of his goods on ten days notice; and then provides, "If the goods and chattels be not sufficient to satisfy the warrant, the same may be levied upon the *person* of such officer, who *may be committed to prison*, there to remain until discharged by due course of law."

Thus, we see it is *assumed* as the *duty* of a collector to pay over whatever amount the Department charges him with, and his failure to do so at once ranks him as a *defaulter*. No action at law is instituted, as between parties occupying equal positions, to determine their respective rights; his superior officer has already *given judgment* in the matter, and *execution against both his person and property* issues to enforce it. Such a remedy is incompatible with the idea of an option, to obey or refuse, on the part of the collector.

But Congress has not left to implication a matter so vital to the public service; it has by express enactment prescribed what public policy so imperatively requires.

SEC. 2652, (Revised Statutes,) provides, "It shall be *the duty* of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any *difficulty shall arise as to the true construction or meaning of any part of the revenue laws*, the decision of the Secretary of the Treasury shall be *conclusive* and *binding upon all officers of the customs.*"

This provision not only compels collectors to accept the decision of the Treasury Department in their dealings with other parties, but it makes that decision equally binding in cases between the Department and collectors themselves; and in the latter class of cases the necessity for the rule is, by far, the most urgent. Thus, we see, a collector can have no option; the Department is empowered to determine the question, and its decision is to him the law.

Lawson did, then, all the law permitted him to do; he requested to be allowed the fees of the office, and the Commissioner of Customs (who, for the purpose of this order, must be considered as the Treasury Department,) refused the request, and required him to account for them. His letter, coming from a superior to a subordinate, was the language of imperative command. It was Lawson's duty to obey—the *law required him to obey;* and litigate whatever rights he might have in the tribunal which Congress has established for that purpose, where such questions can be determined without inconvenience to the Government and it can have the assistance of its immediate law officers. He had no other remedy; and either Congress intended this as the proper one, or it has left all the rights of collectors, no matter how plain under the law, under the absolute control of the Treasury Department.

If this view is correct, the rule of voluntary payment has no application, and cannot affect the right to recover; for it will hardly be contended that the performance of a duty imposed by law, and as to which there was no option, can furnish the foundation for an estoppel.

It is most earnestly insisted that this is the true doctrine to govern in cases like the present.

If the above position is untenable, and it shall be determined that Lawson had the right to disobey the positive command of the Treasury Department and retain the money, we contend—

II. The payment, under the circumstances, was, in no sense, voluntary.

As matter of *fact*, there can be no question of this. Lawson believed himself entitled to these fees, and wrote to the

Department, requesting to be allowed them in his accounts; the Department refused his request and demanded he should pay them over; and it was only *in consequence of* (III. Finding, p. 6,) this imperative and authoritative demand from a quarter with which he could not contend, that he yielded. He *knew his rights* and *insisted upon them*. The payment was made under the influence of forces stronger than his sense of immediate interest in the money, and against his wish to retain it. Is there any rule of law which will reverse the *actual fact*, and treat this reluctant obedience to the peremptory demand of his superior officer as a voluntary act?

For the purpose of this argument it must be conceded the Government had no claim whatever to this money. Legally and equitably, it belonged to Lawson alone; he performed the services for which the fees were paid, they were paid for his use, and Congress intended he should retain them. The only claim the Government now asserts is possession, obtained through an enforced obedience to its confessedly illegal order. *Ex equo et bono*, it has not the shadow of a right to this money, and its retention of it under the circumstances is against conscience.

The doctrine that money voluntarily paid cannot be recovered back, rests upon no principle save that of *estoppel*, in the interest of public convenience, and "so harsh a rule ought to be modified by every exception which can be adopted without defeating its policy."

Moreland vs. Atchison, 19 Texas, 303.

Therefore, while admitting the rule, Courts will always lay hold of any equity they can find, and relieve against it; as, among others, in cases of undue influence (Story's Eq, section 116, *et seq.* for the general doctrine.)

Such undue influence grows out of INEQUALITY BETWEEN THE PARTIES.

The principle is thus stated in 2 Rob. Prac. 471. "An action lies to recover back money where the payment cannot be considered a voluntary payment, *the parties not being on an equal footing.*"

In this case such inequality existed on account of the relations between the parties.

Lawson was a plain citizen, holding an office under the Treasury Department. Congress has provided that Department with the amplest and most stringent remedies to enforce its demands. The consequences of a refusal on his part to obey its order were plain. Primarily, he would have lost his office. The law compels the Department to treat him at once as a defaulter; and, although it does not in terms remove him for such a refusal, it cannot be doubted that it would have been the duty of the department to secure his immediate dismissal from the service. Whether such a course was obligatory or not, experience and reason make us sure it would have been promptly pursued. The Department could not have tolerated the continuance in office of a defaulter until the regular expiration of his term; such dallying with reluctant officials is incompatible with the public interests. Moreover, the stringent remedy provided in section 3625, *et seq.*, already quoted, would at once have been put in operation.

The loss of his means of livelihood, a stigma upon his good name, an indictment against him as a defaulter, the seizure of his property and the incarceration of his person, were thus the immediate and necessary consequences of his refusal to obey.

In Alston vs. Durant, 2 Strobh., Reps. 257, which was a suit to recover money illegally demanded by a sheriff, the Court, in a carefully considered opinion, uses language very applicable to the case at bar; on p. 265, it says: "How can it be said the parties were on terms of *fair equality?* For all essential results, here was a public officer, acting as judge in his own case, with power to enforce his judgment, or else to drive the adverse party to a much greater sacrifice, it may be, and thus wresting from a citizen a sum of money which, *ex equo et bono*, he could neither receive or retain. There must be a *clear difference* between the case of a *public officer withholding of his own mere motion* the rights of a private person, and a *demand of one private citizen against another*, with *no power beyond the ordinary modes of legal proceeding* to vest and enforce it, acquiesced in, though unlawful." "How much

stronger must this difference be in the case of a great Department of the Government, vested with the extraordinary powers above alluded to, and one of its subordinate officials!

In Boston Co. vs. Boston, 4 Metc., (Mass.) 181, speaking of the doctrine of voluntary payment, the Court says: "The reason of the rule and its propriety are quite obvious when applied to a case of payment upon a mere demand for money, *unaccompanied by any power or authority to enforce such a demand except by a suit at law.* In such a case, if the party would resist such a demand, he must do so at the outset. The parties treat with each other on *equal terms,* and if litigation is intended by the party of whom the money is demanded, it should precede payment."

To the same effect is the case of Morgan vs. Palmer, 2 B. & C., 729. There the plaintiff applied to the defendant, the mayor of the town, for a license as publican. Before it would be granted, the plaintiff was required to pay certain fees, which it was proved had regularly been paid to the mayor for such services for a period of sixty-five years. The plaintiff paid the fees demanded without protest, all the parties, it seems, supposing the transaction proper. In a suit to recover them, it was held that, the fees not being legally demandable, a payment under such circumstances was by compulsion, and the money could be recovered. Abbott, C. J., (p. 734,) said: "It has b en well argued that the payment having been voluntary it cannot be recovered back in an action for money had and received. I agree that such a consequence would have followed had the *parties been on an equal footing.* But if one party has the power of saying to another 'that which you require shall not be done except upon the conditions which I choose to impose,' no person can contend that they *stand on anything like an equal footing.* Such was the situation of the parties in this case." It will be observed there was here no duress of person or goods, and no power over either; no threat of injury to good name and character, or any power which could be aggressively exerted; the compulsion arose solely from the fact that the defendant had the power to deny the poor privilege of selling beer.

The case of Dana vs. Kemble, 17 Pick. 545, is a very strong authority. There the defendant had contracted with the plaintiff to act at the Tremont Theatre for half the gross receipts of the house, it being understood by the plaintiff, that the terms were to be as favorable for the plaintiff as those on which the defendant acted at other theatres, and the defendant representing that they were so. One night after the play was over, and it had been *advertised* that the defendant was to play the following evening, the plaintiff informed him that he had good authority for believing he acted at another theatre on more favorable terms; but the defendant denied it, and threatened that unless he were paid one half the gross receipts, he would not act on the following evening. Thereupon the plaintiff paid him, and it was held he could recover back the money so paid, on the ground that the defendant had used his vantage of position to compel payment. The Court says: (page 550,) "It was advertised that the defendant and his daughter would play on the following nights, and he refused to perform unless the money should be paid. We think this was a species of *constraint sufficient to excuse the plaintiff in paying the money.*"

In the case of Bates vs. N. Y. Ins. Co. 3 John. Cas. 240, A subscribed to certain shares in the N. Y. Ins. Company, the amount to be paid in installments. After the payment of certain installments, A assigned the shares to B, who punctually paid the remaining installments to the company, and upon the payment of the last one demanded a transfer of the shares to him as provided for by the articles of incorporation. The company refused to transfer them until B should pay an amount due by A on another account, A being then insolvent; B paid the amount without protest, and the transfer was then made. In a suit by B to recover the sum so paid, it was held that "an undue advantage had been taken of his situation," and he was allowed to recover.

In Ripley vs. Gelston, 9 Johns. Reps. 201, a vessel, fitted out for a foreign voyage, was, by the Collector of New York, refused a clearance unless the owners would pay a tonnage duty, which, under the circumstances of the case, the Court held could not be demanded. The owners paid the tax,

and afterwards brought suit against the collector for the money so paid. A few days after it was paid, and before the suit was commenced, the collector paid the money into the Branch Bank of the United States, to the credit of the Treasurer of the United States; and no request or notice was given by the plaintiffs, at any time, to the collector, not to pay over the money. It was held the money was paid under compulsion, and could be recovered from the collector; and that no notice to him not to pay it over to the Government was necessary to be shown, as the payment was by compulsion. This case, citing numerous authorities, not only establishes that a payment under such circumstances is not a voluntary act, but that a notice (*which is the sole purpose of a protest,*) is only necessary in a suit against an agent, and only then when money has been mispaid to him expressly for the use of the principal, and the agent has paid it over; and that even in such a case, if the payment was by compulsion, the notice is not required.

In Massachusetts, the law *required the collector of taxes,* in case of a refusal to pay, *to issue a warrant,* in the nature of an *execution,* under which both the *person* and *property* of the *delinquent would be taken.* Under this law, P. being called upon to pay a tax for which he was not legally liable, paid it without protest, and sued to recover it back. The Court held (Shaw, C. J.,) that the payment was not voluntary, and could be recovered. They relied upon the fact that it was *obligatory upon the collector to issue the warrant* upon a default, and hence, P. need not wait for the inevitable.

Preston vs. Boston, 12 Pick. 7.

See, to the same effect under the same law—

Amesbury Co. vs. Amesbury, 17 Mass. 461.

Boston Co. vs Boston, 4 Metc. 181.

We refer to these Massachusetts cases for the purpose of showing that, whatever may be the ordinary doctrine in regard to the recovery of taxes upon an illegal demand, the *peculiar stringency of the statute* for their collection in that State, is

held to make their payment under an illegal demand, compulsory; and to call attention to the similarity of the provisions of that statute with the remedy given the Treasury Department against delinquent collectors. Here, we have not only the severity of the remedy which the Court in those cases held of itself made the payment compulsory; but the duty of obedience to his official superior, the inevitable loss of his office and means of livelihood, and the disgrace of a criminal charge, all operating together to deprive the payment of the least resemblance to a voluntary act. In the words of Baron Martin in Steele vs. Williams (cited *post*), "to call it voluntary is an abuse of language."

For other cases, showing where money is held to have been paid under compulsion, growing out of the unequal situation of the parties, we refer to—

Close vs. Phipps, 7 Mann. & Gran. 586.
Parker vs. Great West. R. R., Ib. 253.
Snowden vs. Davis, 1 Taunt. 359.
Steele vs. Williams, 20 Eng. L. & Eq. 319.
Astley vs. Reynolds, Str. Reps. 915.
Wheeler vs. Smith, 9 How. (S. C.) 55 and 81.
Clinton vs. Strong, 9 Johns. Reps. 370, and cases cited in 2 Rob. Prac. 471.

It will be observed that, in all the above cases, the parties had the means of the ordinary legal remedies, and generally such as were adequate to prevent or redress the wrong; and in no one of them were the considerations which made the payment to be looked upon as compulsory, equal, either in number or force, to those operating in this case.

The doctrine now contended for by the Government is contrary to its practice, based upon a line of precedents in the Court of Claims since Adams' case, 1 Court of Claims Dec. That Court has uniformily held that a right to recover existed under circumstances like the present; and we submit that these precedents, upon which the Government has acted for so long a time in its dealings with its subordinates, ought not to

be easily reversed; especially when the result would work peculiar hardships and is against conscience.

The general doctrine is well summed up in Debow vs. U. S., 11 Court of Claims, 672, where, after referring to authorities to show that no protest is required, the Court says: (p. 679.) 'In short there is a current of authorities which hold (apart from some statutory requirement of protest at the time of payment) that a payment made to a *public officer who has the power of compulsion behind him*, or a payment exacted by an officer *colore officii* as the condition to the delivery of a man's property, is never to be considered a voluntary act. As was said by the Court in one of these cases, (Clinton vs. Strong.) 'It would lead to the grossest abuse to hold a payment made under such circumstances a voluntary payment, precluding a party from contesting it afterwards.' And as was said by Baron Martin, (Steele vs. Williams,) in another, 'As to whether the payment was voluntary, that has, in truth, nothing to do with the case; to call it a voluntary payment is an abuse of language. Where a party says: "I charge you such a sum by virtue of an Act of Parliament," it matters not whether the money is paid before or after the service is rendered; if he was not entitled to claim it the money may be recovered back.' "

The true principle applicable to this case cannot be better expressed than was done by the same Court in Patten's case, 7 Court of Claims Dec., p. 274, which was substantially similar to this, the suit being by a collector for part of his salary which he had been required to pay into the treasury. "But, it is urged for the defendant, (the United States,) that the claimants acceptance of the last allowance fixed the salary at $3,000. If he had stood on an *equal footing* with the Treasury Department, *free to accept or refuse as he might see proper, and not liable to severe resorts by the Government against him in case of his non-acceptance*, there might be some show of reason in this; but such was far from being the case. From the date of the order of February 25th, 1869, he stood charged on the books of the Treasury Department with that thousand dollars, and, if he did not pay it, he was *liable to removal from office, to the summary seizure of his property under a warrant of dis-*

tress and to *indictment as a defaulter.* That, under such circumstances, he accepted the allowance, is not to be construed as an *estoppel of his right to appeal to this Court for redress of a wrong which he had no power to resist, which no conduct of his had evoked, and against which otherwise there was no relief.*"

The counsel for the Government relies upon the cases of Lamborn vs. Commissioners, 97 U. S., 181, and Railroad Company vs. Commissioners, 98 U. S., 541; neither of them sustains the position for which he contends. Both were suits to recover taxes illegally assessed.

In Lamborn's case the payment was purely voluntary. The money had never been demanded, and, as the Court say, quoting with approval the opinion of the Supreme Court of Kansas, (p. 186.) "The money was not paid on compulsion, or extorted as a condition. *Had the plaintiff desired to have litigated the question he could have done so without paying the money. There was no legal ground for apprehending any danger on the part of the plaintiff. He cou'd have litigated the question as well before as after process.* Regarding then the payment as *purely voluntary,* &c.

But while Lamborn's case is so different from the one at bar, this Court refer there with approval to principles, which make the authority strong in favor of the appellee. On p. 187, they cite the case of Kansas R. R. vs. Commissioners, 16 Kans. 587; and explain that a tax paid by the R. R. Company in that case was allowed to be recovered back, "on the ground that, if the tax was not paid, it would be the *immediate duty of the county treasurer to issue a warrant to the sheriff to levy upon and sell the personal property* of the company therefor." There, the statute was neither more peremptory, or as severe, as the provisions of the Revised Statutes, giving a remedy to the Treasury Department against collectors; it simply affected the personal property of the delinquent; and the arrest and imprisonment, indictment and loss of office, which are the additional consequences of a refusal on the part of a collector, were all wanting. The case is on the same line as the Massachusetts cases, cited *supra;* and they all establish the principle that the mere stringency of a remedy will, of itself, suffice to

make a payment made to avoid it compulsory, when the demand on which it was made is illegal.

And again, (page 187,) this Court, speaking of the recovery of taxes illegally demanded, says, that where the tax sale "would have conferred a *valid title upon the purchaser, we cannot doubt that a payment of a tax made to prevent it, should be regarded as compulsory and not voluntary.*" Now, in Murray's lessee vs. Hoboken Land Company, 18 How. (S. C.,) 272, this Court has decided that a sale by the Marshall under the provisions of section 3625, &c., confers a valid title upon the purchaser, even for the purpose of ejectment. This would seem to be conclusive of the present controversy.

Nor does the case of Railroad Company vs. Commissioners, 98 U. S., 541, help the contention of the appellant. It, too, was a suit for the recovery of taxes; and the Court admit that a power existed, although that power was only *an execution against the property* of the company, which, if actually threatened, would have constituted a case of duress.

On page 544, they say, "*the real question is whether there was such an urgent and immediate necessity* for the payment of the taxes in controversy, as to imply that it was made upon compulsion." The decision was upon the ground that the power lay dormant; it had not been threatened or alluded to; "*the taxes had not even been demanded*, and no special exertion put forward by the treasurer for their collection." As in Lamborn's case, the "parties could have litigated as well before as afterwards." The company paid them, on its own motion, in a lump, without any application on the part of the officer, without the party paying specifying, or even knowing, what portion was due and what was illegal; contenting itself with a sweeping protest; not applying to anything then thought of, but designed to cover all contingencies that might possibly occur in the future. The Court rightly pronounces the suggestion that they were paid under fear of the execution, a pretext and subterfuge. As matter of fact, the fear of the execution did not operate in the least; the company did not inform itself of its rights, but paid the money of its own motion, with the intention of thereafter looking into the matter and seeing what its rights were, relying on a general protest, the grounds of which, at the time, it could not have defined if called upon.

Here the case is very different. Lawson knew his rights and insisted upon them. The Department, after consideration, determined the question against him, and demanded payment. Armed with powers, as to him, compared to which all remedies ever given for the collection of taxes are mild, this demand compelled obedience; coming from a superior to a subordinate, its language was an imperative command. The public interests and the unmistakable letter of the statute, require submission; *loss—certain, immediate and irremediable*—awaited refusal. Only reckless, defiant folly could have hesitated. There was no remedy by which he could avoid these consequences and save his rights. An injunction could not have done it, even had he been able to give the necessary bond; because, although the question might thus ultimately be determined in his favor, the loss of his office, the seizure of his property and person, and perhaps an indictment, would have preceded. A party is not compelled to wait until the matter has proceeded to such extremities. He may do so if he choses and is able to give the bond, and thus suffer only the primary consequences of a refusal; but in such case he takes upon himself the risk of an absolutely correct construction of the law. If he is mistaken in his opinion, no matter how *bona fide* may have been his conduct, all the consequences above recited inevitably follow. He must be *sure* of the decision of the Court in advance; else comes—the Deluge.

In all the cases before recited, and in the others referred to for the appellee, a remedy by injunction, mandamus, or other legal proceeding would have been far more effective to prevent loss than any that could have been availed of by Lawson; apart from the fact that an action at law for damages would have, in those cases, redressed the wrong. But in not one of them was a suggestion made that the compulsory character of the payment was lost, because it might have been resisted by injunction. The law allows a man to act upon common prudence, and not to await extremities.

The only other authority relied on for the appellant, is Brisbane vs. Dacres, (5 Taunt., 143); it seems to us to teach the opposite conclusion.

The captain of a King's ship brought home in her public treasure upon the public service, and treasure of individuals for his own emolument; he received freight for both, and paid over

one-third of it, according to the usage of the Navy, to the Admiral under whose command he sailed. It was found that "the payment was made on the *behalf, and account, and with the sanction of* the plaintiff, (the captain,) with knowledge of all the circumstances, but *under an idea of a right in the Admiral* to a third of such freight, on the *ground of the before-mentioned usage*." (See statement of case, page 146.) Discovering that the law does not compel captains to pay to Admirals one-third of the freight, the captain brought suit to recover it back; and it was held he could not recover private freight, because the whole of that transaction was illegal; nor the public freight, because he had paid it with full knowledge of the facts, althought in ignorance of the law, and *because it was not against conscience for the defendant to retain it.* By three, against Chambre, J.

There was in that case no pretence of compulsion; not even an order or demand for the freight by the Admiral, nor any power on his part over the captain in regard to it. The payment was made by the latter on his own motion, *because he thought the Admiral was entitled to it,* and was as purely voluntary as such an act can be. Yet, the Judges said, even under those circumstances, the money might have been recovered if the plaintiff had been *ex equo et bono* entitled to it. Lord Mansfield said, (page 160,) "If it was against his (the defendant's) conscience to retain this money, an action might be maintained to recover it back." See, also, the remarks of Chambre, J. (page 158,) and Gray, J. (page 155.) Heath, J., (page 160,) based his decision upon the ground that the "plaintiff was judge in his own case and decided against himself, and he cannot be heard to repeal his own judgment."

Here Lawson is alone *ex equo et bono* entitled to the money. The Government asserts no claim but possession, derived through his compulsory obedience to its own illegal order, which no conduct of his had evoked, and which he was powerless to resist. Its possession under the circumstances presented by this Record, must be held, in the language of Lord Mansfield, "to be against conscience," and its recovery, on the authority of Brisbane vs. Dacres, must for that reason be decreed.

No protest is necessary to be shown in a case like this. The character of the payment must be determined by the facts

attending it. If they make it out to have been compulsory, no protest can make it more strongly so; if they fail to stamp it with that character no protest can supply the deficiency. In no one of the cases relied on *supra*, for the appellee, where a recovery was allowed, was a protest proved, or its absence held to affect the right; and we have been able to find no case in which it has been held necessary, or where, when a recovery has been denied, it has been intimated that a protest would have produced a different result. In Boston Co. vs. Boston, 4 Metc., 181, and Adams' case, 1 Court of Claims, 306, it was expressly held that no protest was necessary; and in the other cases that conclusion seems to have been a *concessum*.

The only object of a protest, in any case, is *notice*, and this is only required to be given when the suit is against an *agent*. As it is a good defense for him that he has paid over the money he has collected to his principal, if it is desired to hold the *agent* personally liable, he must have notice, by protest or otherwise, of the claim, so that he may retain the money, to abide the result of the suit, for his own protection; e. g. in the case of a suit by a citizen against a collector for duties illegally demanded. But, even in suits against agents, no protest or notice is required when the payment is made under compulsion.

Ripley vs. Gelston, 9 Johns. R., 201.
Elliott vs. Swartwout, 10 Pet., 137.
Bend vs. Hoyt, 13 Pet., 263.

When the suit is against the principal, or when the money is paid directly to him in the first instance, no notice or protest can, on principle, be required; and there is no case, it is believed, in which the contrary has ever been suggested. Nor do we understand the counsel for the Government now to contend for it.

Not having had an opportunity of seeing the brief of the counsel for the appellant in this case, we have treated his argument in the Ellsworth case as the one he intends to rely on here also.

The claim of Lawson, however, is stronger than Ellsworth's. It may be contended, in the latter case, that, as the order had already been given when Ellsworth entered upon his office, he took it subject to the order. In the case of Lawson, no such position can be advanced. He assumed the office with all the rights belonging to it, unaffected by any adverse constructions of the Department, and subject to no conditions. Whatever may be the legal effect of this difference, it certainly seems to make the equity of the claim stronger in favor of Lawson.

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